IBM

Business Conduct Guidelines

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FOREWORD

Many sections of the Business Conduct booklet have been rewritten and shortened in an effort to make the contents easier to understand. The text of the Consent Decree is included in the back of the booklet for reference purposes. However, because the Decree is lengthy and written in legal language, the booklet also includes a summary of the Decree's provisions.

The Antitrust Division of the U. S. Justice Department has been engaged for more than a year in a study of the data processing industry: IBM has been cooperating with the Department by supplying documents and other information. The fact that our growing industry is considered vital enough to the economy to warrant such a study indicates that conscientious compliance with our Business Conduct rules is more important today than ever.

All exempt employees and certain categories of non-exempt employees are asked to study this booklet once a year, certify to the Chairman of the Board that they understand their responsibility to comply with the policies and rules set forth, and recognize that any violation of these policies and rules is cause for dismissal from the Company.

BURKE MARSHALL
May 1, 1968

This booklet replaces and supersedes the booklets *Business Conduct Policies: Responsibilities and Guide*, published in January 1966 and *Guidelines for Business Conduct*, published in August 1965.

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ANTITRUST RESPONSIBILITIES AND GUIDE

I. POLICY STATEMENT—ANTITRUST RESPONSIBILITIES

T. J. WATSON, JR.

This statement of antitrust responsibilities was made by Mr. Watson at a dinner meeting in New York City on March 22, 1961, to all members of the IBM Corporate Management Committee, the Division Presidents and General Managers and the Corporate Staff Heads.

We have always tried to operate the IBM business at a high rate of speed; and to sustain this speed, we have reorganized several times in recent years following the basic pattern set at Williamsburg in November 1956. Our fundamental objective in all of these organizational changes has been to focus management's attention on the individual problems of our business, breaking these problems down into their component parts so that a man can get his arms around them.

The overriding objective has been one of tempo. We have urged you, and through you all of your people, to make decisions and make them quickly. We have tried to instill a strong sense of proprietorship all the way down the management line to achieve this. We have used different phrases to express this—"a sense of urgency," "healthy dissatisfaction," "proprietorship," "delegation," etc.

I am firmly convinced that a good deal of our success has stemmed from our willingness to pick people who want to make decisions and who seem to innately have this sense of urgency. The "young man in a hurry" has done well in IBM, and I propose that he continue to do well.

However, we do have a problem in coping with bigness, and it is the problem of dealing with size that I want to discuss with you.

Because of our size, our actions are closely watched. People look for reasons to accuse us of improper actions whether they be competitors or imitators. The purpose of this get-together is to discuss some of the problems of complying with the letter and spirit of the antitrust laws without losing the speed of action that I like to think of as characterizing the IBM business. We can't move so fast that while we are acting one can hear the breakage in the background.

In any company of a size such as ours, there are three basic classes of conduct with which we are concerned:

1. In the first class are those acts which are in and of themselves violations of the antitrust laws or the Consent Decree. There is no need to belabor them. They are clearly to be avoided. Examples of some of these violations are:

   (a) Delivering machines out of strict sequence, which we are ordered to follow under the Consent Decree.

   (b) Raising purchase prices of machines above equivalence to the rental prices.

   (c) Agreeing openly or impliedly with a competitor on prices, terms of sale, marketing methods, territories or customers.

   (d) Open aggression, such as deliberately misstating the capacities of a competitor's machines.

These obvious violations everyone should know enough to avoid. The penalty for violation of the antitrust laws or the Consent Decree must, of course, be dismissal. However, so that there will be no unintentional stumbling in this area, we will put out a written statement of those practices particularly to be avoided.

2. The second class consists of those acts which, though not themselves illegal, may create a pattern of apparent monopolistic practices. Even though no one will probably start a lawsuit over any one of them, these acts may accumulate into an antitrust action brought either by the Government or by an aggrieved competitor. Examples of this category are:

   (a) Unhooking—that is, the inducing of a cancellation of a firm competitive order prior to installation.

   (b) Proposal or mention to a prospect of a commercial product before it has been officially announced, when done to thwart a specific competitor.

   (c) Subtle disparagement of a competitor's products by suggesting, for example, that his cards may not work so well in our machines.

Acts in this second category, standing alone, technically may not be a violation of the antitrust laws. But when judged by hindsight a series of several of these acts might be regarded as an indication of an over-all attempt to monopolize and provoke the institution of an action.

Each of you is responsible for recognizing the impropriety of these acts and eliminating them.

3. The third class of conduct is more subtle than the first two categories and may be thought of under the heading of "corporate ethics and morality." But these acts may also provoke complaints to the Department of Justice and, in any antitrust suit which may be brought for violations arising out of acts in the first two categories, these unethical practices would add fuel to the antitrust fire.

It is hard to define the third category of acts other than by a simple test, which I am sure already exists in the conscience of each of you. It is this: Turn the situation around. Suppose that you were a competitor—small, precariously financed, without a large support organization, and without a big reputation in the field—but with a good product. How would you feel if the big IBM Company took the action which you propose to take? Would you regard the IBM Company as taking unfair advantage of you? Would you consider that the IBM Company was using a sales tactic which IBM possessed solely because of its size and reputation, and which, therefore, was unavailable to you?

We must avoid the type of action—even lawful action—which irritates, antagonizes and finally goads a competitor to action. We simply cannot shoulder people around or give the appearance of doing so.

When considering your actions, remember that there is a timing problem involved. Small irritants, when put together in a black book, can be made to add up to an extremely damaging, if not illegal, picture. This is part of the problem of evaluating any single act. If you have a perfectly nice son and if you were to document on a single sheet of paper all of his minor misdemeanors over a year's time—and then read them off—your perfectly nice son would probably sound like the worst possible juvenile delinquent.

You are all familiar with the recent electrical industry case. You were all shocked by the flagrant disregard by responsible senior executives of one of the most fundamental rules of the antitrust laws; namely, the rule against fixing prices. The tragedy is that these businessmen thought they were doing right for their companies in engaging in this secret conspiracy, knowing it was illegal.

Moreover, you should know what Chief Judge Ganey said in that case:

> "This Court has spent long hours in what it hopes is a fair appraisal of a most difficult task. In reaching that judgment, it is not at all unmindful that the real blame is to be laid at the doorstep of the corporate defendants and those who guide and direct their policy. While the Department of Justice has acknowledged that they were unable to uncover probative evidence which could secure a conviction beyond a reasonable doubt, of those in the highest echelons of the corporations here involved, in a broader sense they bear a grave responsibility for the present situation, for one would be most naive indeed to believe that these violations of the law, so long persisted in, affecting so large a segment of the industry and finally, involving so many millions upon millions of dollars, were facts unknown to those responsible for the conduct of the corporation and, accordingly, under their various pleas, heavy fines will be imposed."

You all realize the shocking indictment of the integrity of American industry which has resulted from these actions. A result which rightfully makes the man in the street distrust and dislike big business and also has caused bewilderment on college campuses.

I would like to conclude this subject by making the following points:

1. There should be no question that I mean business when I say it is our policy to comply with the antitrust laws in letter and spirit. Similarly, there should be no question that you line managers bear the primary responsibility in this area also.

2. All operating people must make their business decisions against a backdrop of a keen awareness of this policy. Actions must be examined critically to determine not only if they are legal or

illegal but whether someone else might interpret them as being legal or illegal. Decisions must be made with a realization that the consequences that may result to the IBM Company may be of a more serious and permanent nature than any temporary business advantage to be gained.

3. We have a staff of lawyers inside and outside the Company who can help educate you and your people and who can advise you as to the law and as to specific transactions. To use the lawyers correctly, however, certain things must be made clear:

   (a) All operating people have a clear responsibility not to conceal, misstate or fail to analyze the facts, since any legal advice is no better than the facts upon which it is based.

   (b) All operating people have the responsibility to keep the lawyers advised of trends in the market and in competition. And also to inform the lawyers of proposed transactions in sufficient time to permit a careful analysis of the problem.

   (c) Division counsel must be understood as not only representing their divisions but as also having a responsibility of protecting the reputation and legal posture of the IBM Company as a whole.

4. Our job as the top management of this business is to:

   (a) Fully understand the business and legal environment in which we operate.

   (b) Make certain that our people understand those facets of this environment appropriate to their particular jobs.

   (c) Make sure that our people understand the specific "do's" and "don'ts" of their jobs.

5. Finally, in doing all these things we must preserve the delicate balance between the pace of operation that has brought us where we are, and the caution that is necessary for operating in today's world.

T. J. Watson, Jr.

II. ANTITRUST COMPLIANCE–GUIDELINES FOR IBM MARKETING

A. The Theory of Antitrust

Antitrust laws–in the U. S., Europe and elsewhere–are based on the premise that a healthy state of competition tends to assure reasonable prices, efficient services and a more productive economy.

Two types of interference with competition which these laws are designed to prevent may be illustrated by the following cases:

Case 1–Two or more competitors agree between themselves to take life easy by fixing prices at identical levels and dividing the market between them.

Case 2–A company obtains a very large share of a market by predatory price cutting and other unfair acts intended to drive its competitors from the market.

Case 1 is called an unlawful agreement or "conspiracy" to restrain trade. While IBM's competitors could readily attest that we do not "take life easy" by entering into improper agreements, our normal business operations bring us into occasional contact with them. It is therefore important to know how to conduct ourselves to avoid any wrong impressions as to the purposes of any meetings with competitors.

Case 2 is called "monopolization" under U. S. law and "abuse of dominance" under various foreign laws. In order to prove that a company has monopolized, it must be shown that it (a) possesses the power in a particular market to set prices or foreclose entry to competitors, and (b) has achieved or retained that power by illegal or exclusionary practices.

Example: Company X has 80% of the electronic widget market. Its prices are double those of the competition and are unresponsive to normal market forces. Recently two new companies almost succeeded in establishing themselves in the market, but X drove them out by selective price-cutting, unhooking their orders and disparaging the quality of their products.

In the example, a court would hold that X possessed the power to set prices and to exclude competition, and had retained this

power by illegal and exclusionary practices. The consequences of being adjudged guilty would be very severe. Courts have the power not only to impose heavy fines, but to order divestiture, e.g., that a company be broken up into several smaller units.

It is also illegal for a company to attempt to monopolize any market. Therefore, a powerful company which engages in illegal or exclusionary practices violates the antitrust laws even though its efforts have not resulted in monopoly power.

Mere size alone is not a violation of the law, unless accompanied by market power and illegal or exclusionary acts as discussed above. However, it should be apparent from the above discussion that any unfair, aggressive tactic employed by a large company against a competitor could be open to challenge as an improper attempt to exclude competition. Where a competitor goes out of business, it is not always easy to judge whether this resulted from normal market forces or from unfair trade practices. But where there was evidence that a large company had consistently acted in an unfair manner, the antitrust authorities or the competitor might be able to persuade a court that these acts had caused the competitor's demise, and that the large company was therefore guilty of monopolization or an attempt to monopolize.

The U. S. antitrust laws apply to the international operations of U. S. companies to the extent that U. S. imports or exports or competition within the United States are affected. In order to assure compliance with these laws and with foreign laws and to maintain a unified business posture throughout the world, IBM has a single set of Business Conduct policies applicable both to IBM Corporation and to the world-wide operations of its international subsidiary, IBM World Trade Corporation.

B. Rules of Fair Competition

1. Disparagement

(a) *General rule*

Excellence of IBM products and services is the keystone of IBM's competitive philosophy. It is IBM policy to stress the merits of our products and services, and to refrain from criticizing those of our competitors.

Statements about a competitor, its products or services would amount to disparagement where false, misleading or simply unfair. Such statements would be unfair, even though factually correct, if they stated or implied anything negative or derogatory.

EXAMPLE: Salesman to customer: "I see Competitor X is back in the red again."

Where competitive cards, tapes, disk-packs or peripheral equipment are used with IBM equipment, the IBM representative should scrupulously avoid attributing breakdowns, interface problems or other difficulties to the competitive product. If the competitive product is in fact the cause of the difficulty, IBM management personnel rather than the IBM representative should bring this to the customer's attention.

(b) *Comparisons*

Comparisons between IBM products and services and those of competitors must be factual, fair and complete and must conform to existing instructions. For example, the Data Processing Division's current instructions provide that information concerning competitive products for comparison purposes must be thoroughly researched using the Computer Description Manual and the Commercial Analysis department.

If asked about the status of a specific installation of a competitor, the IBM representative may suggest that the customer or prospect contact the competitive account. However, he should not indicate or imply in any way that the customer is having trouble with the competitive equipment, either in installing, converting or otherwise.

EXAMPLE: Customer: "What do you think of your competitor X's installation over at Standard Motors?"

Salesman: "I understand they are having problems, but you should go see for yourself."

In the example, it was proper for the salesman to answer the customer's question by suggesting that the customer visit the installation, but it was wrong for him to imply that there were problems with the installation.

The IBM representative should not make any other comments concerning, nor initiate or participate in any discussions about, the competitive installation.

2. Selling Against Competitive Orders

No action should be taken by an IBM representative to "unhook" a competitive order; that is, to do anything to cause a customer or prospect to cancel a firm order with a competitor. From the time IBM learns that the customer or prospect is committed to taking competitive equipment, no attempt may be made to induce the cancellation of the order until the equipment is installed. This includes suggesting or conducting surveys with respect to functions to be performed by the competitive machine, submitting proposals, or any other efforts to sell equipment to be substituted for the ordered equipment.

A firm order exists when the customer has definitely committed himself either orally or in writing to take competitive equipment. Where the customer has given the competitor only a "letter of intent," our sales effort need not be halted unless and until the letter of intent is firmed up into an order. A letter of intent typically contains an expression of the customer's interest in or intention to order certain equipment, but the customer is not yet committed to going through with the order.

Example: Customer Q gives ABC Computers a letter stating: "It is my present intention to order your Super-Duper Model 1, and you agree accordingly to place me on your delivery schedule. I agree to advise you of my final decision within 90 days."

In the example, the customer was not yet committed, hence his letter would be regarded as one of "intent." In any case where the IBM representative is in doubt as to whether a customer letter is a firm order or letter of intent, he should ask the customer for a written statement before continuing his sales activity. A written statement from the customer indicating the status of his contractual relationship with the competitor is also necessary where the customer says he has cancelled a firm competitive order and asks us to make a proposal; this letter should include a statement that the customer no longer has a commitment to obtain the equipment from the competitor, and that the competitor has been so informed.

Our policy against unhooking does not prevent the IBM representative from soliciting orders for equipment to be used in addition to, in conjunction with, or outside the field of application of the equipment ordered from the competitor. After the competitive equipment has been installed, the IBM representative may resume a full selling effort, including the application being handled by the competitive equipment. In the case of the Office Products Division, the IBM salesman may resume his sales effort at this point unless he has reason to believe that the competitive equipment has not been fully paid for.

Additional details of this policy are covered in the Sales Manual.

3. Unannounced Products

Selective disclosures of unannounced products or programs in competitive situations could be construed as an unfair practice aimed at injuring specific competitors. It is our policy generally not to discuss, disclose or propose IBM products or programs before official announcement. Premature disclosures tend to impact our current product line and jeopardize our patent position. In addition, embarrassment and legal liability could result if later technical difficulties caused cancellation of the program or failure to meet specifications.

Exceptions are made for reasons such as to aid in National Defense or to further the development of IBM products or programs. We have set up careful Company procedures controlling such disclosures to avoid any unfairness. No disclosures may be made except in accordance with these procedures and the management approvals required by them.

4. Discrimination

It is IBM policy to make our products and services available to all customers on a fair and equitable basis, without discrimination or preference. This applies to prices and terms of sale or lease. An antitrust exposure could arise where preferential treatment is offered in order to win an order.

Concerning pricing, IBM's general philosophy is to sell at its list prices. The Information Records Division and Office Products Division offer legally justifiable quantity discounts on various supply items in order to be competitive. Also, educational and govern-

mental customers are sometimes granted special prices and terms as permitted by law.

EXAMPLES: The Office Products Division offers discounts to schools and governments, and the Data Processing Division offers an educational allowance to qualifying institutions.

5. SEQUENTIAL DELIVERY

It is IBM policy to fill orders without discrimination between purchase and lease orders and, to the extent administratively practicable, in the order of their receipt. In the case of tabulating and EDP equipment, this is a requirement of the Consent Decree. Exceptions to the normal rule would apply in the case of Government priority-rated orders.

Where a customer desires an earlier delivery than the published delivery schedule quoted by the salesman, he can submit a request for improved delivery. The request may be granted if there is an opening in the schedule.

6. DISCUSSION OF IBM'S SIZE

It is IBM policy not to trade on the Company's success or position in the market. No reference should be made in proposals or discussions with prospects or customers to company-wide figures on such things as machines installed or on order, systems engineers, customer engineers, or amounts expended on education or research.

EXAMPLES: "We're the biggest so you can be sure we'll still be here five or ten years from now."

"My company spent X million dollars last year on customer education."

From the standpoint of fairness, if the big are to become bigger it should be due to superior products and services rather than to mere reliance on the fact that they are already big. Moreover, customers know the difference between quality arguments and essentially meaningless statistics, and may resent the latter.

Relevant data concerning IBM facilities and personnel in the immediate area may be disclosed to the extent necessary to assure

the prospect or customer that his installation and application requirements will be taken care of.

EXAMPLE: "We have a staff of 15 customer engineers here at the branch who are proficient in servicing your configuration. As for back-up possibilities, there are three other customer installations like yours in the area."

7. TAKING "DIRECT AIM" AT COMPETITORS

Vigorous competitive action and counter-action is the cornerstone of a free market which the antitrust laws are designed to promote and preserve. Nevertheless, a large company must avoid overreacting to competition.

In practical terms, this means that we should sell energetically against all comers, but avoid concentrating to an unreasonable extent on one or more specific competitors. This kind of "direct aim" approach could be interpreted by the antitrust authorities, rightly or wrongly, as a strategy to eliminate competition.

EXAMPLE: "Competitor X has just won an order from one of our best accounts. Let's put him on the defensive by applying pressure to all his other accounts."

But why shouldn't a seller be allowed to direct its forces against a competitor at any time it chooses? The answer is that competition works best with a maximum number of competing companies. If a large company concentrates on specific competitors rather than on the open market potential, the long term result might be too few competitors in a market where there is room for many.

It is often difficult to draw a line between proper reaction and overreaction to a competitive problem. Therefore, in any case of doubt the marketing strategy should be reviewed with counsel before implementation.

8. OBTAINING COMPETITIVE INFORMATION

One of the earmarks of a successful company is its ability to obtain reliable information concerning the competitive environment in which it operates. Marketing and technical personnel as well as general management must keep up with competitive developments.

However, there are some important restrictions on what competitive information may properly be obtained and how it may be obtained. A company may not attempt through improper means

to acquire a competitor's trade secrets or other proprietary or confidential information, including information as to facilities, capacities, technical developments, operations or customers. Improper means would include industrial espionage, urging competitive personnel or customers to disclose confidential information, or any other means that are not open and above-board.

IBM personnel may not receive, examine or obtain any information about a competitive proposal where it either (a) is marked "Proprietary," "Confidential," "Classified" or a similar designation, (b) contains engineering plans or drawings, (c) is submitted on a closed-bid basis or under any other circumstances which indicate that the information contained in the proposal should be kept confidential. These restrictions would not apply if the competitor has consented to the disclosure.

Where a competitive proposal or study is properly obtained under the above rule, comparisons should not be made between IBM's approach and the competitor's unless all the rules discussed above in Sections 1 and 2 are followed.

9. Contacts With Competitors

(a) *IBM policy*

While we must avoid all unfair acts against competitors, we may not go to the other extreme and be too "friendly" with them. Competition functions best when each company makes its business decisions independently. Where two or more competitors agree on such things as prices, production or territories, competition is restricted. All such agreements or "conspiracies" are prohibited by law.

Since our normal business activities involve occasional contacts with competitors, it is important to know what may and may not be said in order to avoid creating any wrong impressions. The most frequent areas of normal business contacts include sales to other equipment manufacturers and leasing companies, providing interface information, team bids and purchasing activities.

In all contacts with competitors IBM personnel should avoid discussing such things as prices and terms of sale (except where the competitor is buying from or selling to IBM), costs, inventories, product plans, market surveys or any other confidential or proprietary information. If one of these subjects is raised by a competitor, the IBM representative should explain why he may not talk about such matters and stop the discussion there.

(b) *Trade associations and standards activities*

Trade associations can perform useful and legitimate functions in facilitating the exchange of information on such industry matters as technological developments, government regulations or credit standings. Similarly, standards organizations seek to facilitate technological progress through the development of various technical standards.

Since trade association and standards meetings bring together large numbers of competitive personnel, there is always the risk that some of the represented companies will be charged with having used the association as a meeting place for reaching unlawful agreements. To avoid this risk, IBM personnel should confine their discussion to the specific items on the meeting agenda and should not listen to or engage in informal discussions of any of the prohibited items discussed in 9 (a) above (prices, terms of sale, etc.). If a competitor begins to discuss such matters, the IBM representatives should refuse to participate and should leave the meeting if such discussion is not immediately stopped. Any such case should be reported to counsel.

In all association activities, IBM personnel must avoid any appearance of attempting to take advantage of their company's position in the industry.

C. Relations With Customers

Two principal objectives in our dealings with customers and prospects are to treat them equally and fairly, and to avoid any restrictive arrangements with them that might interfere with our competitors' efforts to market their products.

1. Tie-in Sales

A seller with a strong position in one of its products or services may not force its customers to take additional products or services in order to get the first one. This is called a "tie-in sale" because the additional products or services are "tied" to the one which the customer really wants.

Example: The customer says he likes System/360, but prefers to buy his printers, terminals and supplies from other vendors. Would the IBM representative object?

The IBM representative should of course make all reasonable efforts to present the merits of the IBM products. However, if the customer's decision is to have a mixed installation, the IBM representative should make no objection and should offer to provide the normal support that relates to the particular IBM system ordered by the customer. IBM agreed in the Consent Decree not to require customers to take additional equipment or use IBM cards when buying or leasing tabulating or EDP equipment.

2. Reciprocity

IBM may not agree to buy a customer's or prospect's product or service in exchange for his agreement to take IBM equipment. Such an agreement would constitute "reciprocity" and would be improper whether initiated by IBM or the customer.

Example: A bank demands that we increase our deposits as a condition to its ordering additional IBM equipment.

This does not mean that we may not use the product or service of a firm that is also an IBM customer, but the customer's decision and our own must be made independently.

3. Service Bureau Corporation

One of our customers, the Service Bureau Corporation, is unique in the sense that it is a wholly-owned subsidiary of IBM Corporation. Despite this parent-subsidiary relationship, IBM may not treat SBC more favorably than other service bureaus in supplying tabulating and EDP equipment. This is required by the Consent Decree and applies to prices, terms and conditions and delivery schedules.

Also, IBM may not actively aid Service Bureau Corporation in its sales efforts or take any other action that might tend to give SBC any advantage or "subsidy" not enjoyed by other service bureaus. In cases where the IBM representative believes that a customer's or prospect's job could be better performed in a service bureau, he should point this out. He may also state that IBM has a subsidiary company, the Service Bureau Corporation, which has facilities to do that type of work. However, this should be the extent of IBM's involvement, and the IBM representative should not solicit business for SBC nor give any aid to the SBC representative, including the preparation of specifications and procedures.

D. Relations with suppliers

As with customers, it is our policy to treat suppliers equally and fairly, and to avoid any exclusive arrangements with them that might unfairly block off competitors from sources of supply.

1. Tying up suppliers

A manufacturer may not "tie up" its suppliers so as to limit unreasonably their freedom of action and thereby interfere with competitors' access to the needed items.

Example: A computer manufacturer induces the sole supplier of an important new component to agree (a) to supply all of the manufacturer's requirements for a five-year period, and (b) not to sell to the manufacturer's competitors.

2. Receiving discriminatory treatment

We saw earlier that it would be improper for a seller to discriminate among customers. Conversely, a buyer may not induce or knowingly accept a discriminatory discount from a seller.

Example: Vendor X advises the IBM procurement representative that he is offering a special discount on Standard No. 3 gray paint because "Nobody has as many computers to paint as you."

If there is any reason to believe that a discriminatory price may be involved, a clarifying written statement must be obtained from the supplier in accordance with the procedures set forth in the Purchasing Manual.

3. Reciprocity

We saw in C-2 above that IBM may not agree to buy from a customer in exchange for the customer's agreement to use our products or services. A similar rule applies to our dealings with suppliers: we may not agree to buy from them in exchange for their agreement to use our equipment. Such an agreement would be reciprocity whether initiated by IBM or the supplier.

This does not mean that we may not try to sell IBM products to our suppliers. However, it should never be suggested to a sup-

plier that our purchases from him constitute a reason why he should use our products.

E. Summary of the Consent Decree

In 1952 the U. S. Government brought an antitrust action against IBM, alleging that it had monopolized U. S. domestic and foreign commerce in the tabulating machine business. Although the complaint contained many allegations, the main charges were that IBM had monopolized by:

1. a lease-only policy;
2. tying up patents, inventions and know-how;
3. restraining the growth of competitive tabulating card manufacturers;
4. restraining the growth of competitive service bureaus;
5. restraining the growth of a used machine market.

Under 3 and 4, the Government's complaint asked the Court to order IBM to divest itself of its tabulating card and service bureau businesses.

IBM in its answer denied the allegations of the complaint. After lengthy negotions, IBM agreed with the Government on January 25, 1956 to the entry of a Final Judgment or "Consent Decree" without a trial. Under this procedure, no determinations were made on the issues but IBM agreed to take various actions and to adopt various business practices, including the following:*

1. to sell, as well as lease, its tabulating and EDP equipment on non-discriminatory terms, and with sale prices reasonably related to the lease charges [Decree, Section IV (b), (c) (1)-(3)].

   (a) to fully disclose prices and terms for both sale and lease in the solicitation of orders [IV (c) (5)].

   (b) to fill orders without discrimination between purchase and lease customers and, to the extent administratively practicable, in the order of their receipt [IV (c) (7)].

*The Decree sections are referenced after each item.

(c) to offer without separate charge to purchasers the same type of services rendered to lease customers, except maintenance and repair service which would be offered to purchasers and other owners at reasonable prices [VI (a), (b)].

(d) to offer training courses to outsiders wishing to enter the repair and maintenance business; to sell to them and to owners of IBM equipment CE instructional manuals (at cost) and repair and replacement parts and sub-assemblies (at a reasonable mark-up) [VI (c), IX (a), (b)].

(e) to permit any customer to make alterations and attachments (except where it would interfere with normal operation or maintenance so as to increase maintenance cost), and to furnish instructional manuals concerning his machine's operation and applications [VII (d), IX (c)].

(f) not to require purchase or lease customers to purchase additional machines or tabulating cards from IBM [VII (d), XV (b)].

(g) to limit leases of standard equipment to one year [VII (a)].

2. to license certain data processing patents at reasonable royalties, and to limit consultant agreements with inventors and engineers to one year [XI, XIII (a), (c)].

3. to license certain card and card machinery patents without charge; to sell tabulating card machinery under certain circumstances until 1961; and in 1963 to divest itself of card manufacturing capacity in excess of 50% of total industry capacity [XI, X (b), (d)].

4. (a) to transfer its service bureau business to a wholly owned subsidiary, which would not solicit orders for IBM and would establish prices fairly reflecting all chargeable expenses [VIII (a), (b), (c)].

(b) not to engage in service bureau business on its own or furnish tabulating or EDP equipment to its service

bureau subsidiary except on the same terms offered to other service bureaus [VIII (a), (e)].

5. to offer used tabulating and EDP machines to second-hand dealers at prescribed maximum prices, and to refrain from acquiring used machines except by way of trade-in or credit against sums payable to IBM [V].

The provisions of the Final Judgment dealing with CE training courses, one-year leases and consultant agreements (items 1 (d) and (g) and 2 above) have expired, but the Company has to date with minor exceptions continued them as matters of business policy. Concerning item 3, IBM by 1963 had 51.6% of the national capacity for tabulating card manufacture, and therefore sold off sufficient card presses to come within the 50% required by the Decree (see Order, Appendix B).

All the other provisions of the Final Judgment summarized above are permanent and can be terminated or modified only if the Court finds it necessary or appropriate following a request by the Government or IBM. Violation of any of these provisions may be punishable by fine or imprisonment as determined by the Court.

The full text of the Final Judgment is set forth at the end of the booklet as Appendix A. All questions relating to the applicability or interpretation of any provisions of the Final Judgment should be referred to counsel.

III. BUSINESS ETHICS

A. Policy statement

It is IBM policy to require each employee to observe the highest standards of business ethics and to avoid any activity or interest which might reflect unfavorably upon his own or the IBM Company's integrity or good name. Our rules are based upon the ethical and legal principles that (1) a man's business loyalty may not be divided between opposing interests; and (2) he may not take unfair advantage of inside information or seize for his own gain an opportunity that rightfully belongs to his employer. The subject of divided business loyalties or "conflicts of interest" is discussed below in B. Inside information and diversion of corporate opportunity are discussed below in C and D.

It is not feasible to prepare a detailed catalog of every factual situation that could arise under these rules. Therefore, the rules are presented in broad outline together with a few selected examples. In any case of doubt as to applicability or interpretation of the rules, the employee should consult his manager or counsel.

B. Conflicts of interest

Each employee should avoid any situation where his business loyalty may be divided or appear to be divided between IBM and an outside interest. Such outside interests would include customers, suppliers and competitors.

1. Customers

An IBM employee may not receive pay or other benefits from a customer for advising with respect to IBM products or services. Nor may an IBM employee receive pay from a customer for performing "moonlighting" services relatable to his IBM skills or expertise.

Examples: An IBM Systems Engineer writes programs or operates equipment for a customer after work or during vacation periods as a means of supplementing his IBM salary.

An IBM salesman or educational services representative works as an instructor on IBM equipment at a profit-making institution.

An IBM Customer Engineer services a customer's IBM equipment for pay evenings and weekends.

In such cases the employee's sense of duty and of priorities would tend to be divided between IBM and the customer, and job performance at IBM could be adversely affected. Such cases might also involve diversions of corporate opportunity, discussed below in D. Any employee who is presently engaging in or who inquires regarding outside employment should be advised of existing Personnel instructions on the subject.

2. Suppliers

An IBM employee may not receive pay or other benefits from a supplier for advising with respect to IBM purchases from the

supplier, or work on goods or services being produced by the supplier for IBM. Also, an IBM employee who in any way influences decisions with respect to IBM business with a supplier may not hold any position with that supplier, whether as a director, officer, employee, or agent. No IBM employee nor any member of his immediate family may accept any gift of value from a supplier or prospective supplier which could be construed as being offered because of the IBM business relationship.

This offer of gift should be reported by the employee to his manager, who would return the gift with an acknowledging letter explaining IBM's internal rule on the subject. The rule would not apply to the acceptance of advertising novelties (such as calendars or paper-weights) or an occasional and routine business lunch.

If the employee in any way influences decisions with respect to IBM business with a particular supplier, he may not own directly or indirectly any financial interest in that supplier. This would include employees who draw specifications for, recommend, evaluate, test or approve a supplier's product or service, or who participate in the selection of or arrangements with a supplier.

Even where the employee does not influence IBM business decisions with a supplier, an investment might be improper, depending upon any one or more of the following factors: (a) the IBM position held by the employee, (b) the amount of the investment and its relative importance in relation to his IBM stock holdings and total investments, and (c) the size of the supplier and the amount of business with IBM. Also, any investment based upon inside information would be improper, as discussed below in C.

3. Competitors

(a) *"Moonlighting."* No IBM employee may receive pay from a competitor for performing any kind of "moonlighting" services.

Example: An IBM employee operates, programs or services equipment for a competitive service agency or service bureau.

(b) *Investments.* No IBM employee, or member of his immediate family, should have an investment of a size significant to him in a competitor, including manufacturers of data processing equipment and supplies, typewriters, dictating machines, and leasing companies and service bureaus. Such an investment might be improper depending upon any one or more of the following factors: (a) the IBM position held by the employee, (b) the amount of the investment and its relative importance in relation to his IBM stock holdings and total investments, and (c) the proportion and importance of the competitor's and IBM's businesses which are competitive.

EXAMPLE: Employee Adam Adano reads in a brokerage report that the electronics industry is the best vehicle for capital gains over the next five years. He also thinks RCA color TV has a great future. He sells all his non-IBM stocks for $10,000 and invests the proceeds in RCA stock. His only other stock is IBM (market value $40,000).

After this investment, Adano's stock ownership would be IBM-80%; RCA–20%. This investment would be improper because (a) it was one-fourth as large as his IBM holdings and amounted to one-fifth of his total portfolio; and (b) RCA and IBM compete in the data processing area which constitutes a substantial and important part of the businesses of both companies.

Assume that Adano had invested the $10,000 in Westinghouse rather than RCA. Although Westinghouse is an IBM competitor in the process control field, the proportion and importance of this line to Westinghouse's and IBM's overall businesses is not so great as to make Adano's investment improper. However, the investment would have been improper if Adano's IBM position involved him to any substantial degree in the area of our business where we compete with Westinghouse. Also, any investment in a competitor based upon inside information would be improper.

Apart from direct financial interests in competitors, it would be improper for an IBM employee to serve as an officer or director of a mutual stock fund specializing in electronics stocks or other investments closely related to IBM's business.

C. Inside Information

An IBM employee may not use for his own financial gain, or disclose for the use of others, inside information obtained solely because of his employment with IBM.

Examples: Employee Lou Listen learns from a friend in purchasing that IBM is about to make an important contract with Supplier X. He invests $5,000 in X stock. Later the contract is reported in the Wall Street Journal and X's stock value jumps 20% the first day. Listen tell his wife: "One thousand bucks in 24 hours. Not a bad day's work!"

Account representative Gary Goodear is told by a vice president of the ABC account that ABC is about to be acquired by XYZ Corporation, a very successful larger company. The vice president recommends in confidence that Gary pick up some XYZ stock. Gary does so.

In all such cases, the taking advantage of inside information tends to give the insider an unfair advantage over the general investing public and could be considered a fraud upon those injured. Also, if several IBM employees traded in the stock of a small supplier on the basis of inside information, abnormal runs on its stock might result, with harmful consequences to the orderly conduct of its business.

D. Diversion of corporate opportunity

Diversion of corporate opportunity is to deprive one's company of a chance to do business by seizing the opportunity for one's own personal gain instead of bringing it to the employer's attention. No employee should place himself in a position where revenue which might rightfully have gone to the IBM Company or one of its subsidiaries is paid to him.

The "moonlighting" examples discussed in B-1 and 3 above could constitute diversions of corporate opportunity in any case where the activity deprived IBM of a revenue-producing opportunity.

United States District Court

FOR THE SOUTHERN DISTRICT OF NEW YORK

CIVIL ACTION NO. 72-344

UNITED STATES OF AMERICA,
Plaintiff,

v.

INTERNATIONAL BUSINESS MACHINES CORPORATION,
Defendant.

FINAL JUDGMENT

Filed and Entered January 25, 1956

United States District Court

FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, *Plaintiff*, v. INTERNATIONAL BUSINESS MACHINES CORPORATION, *Defendant*.	Civil Action No. 72-344

FINAL JUDGMENT

Plaintiff, United States of America, having filed its complaint herein on January 21, 1952; defendant International Business Machines Corporation (hereinafter called IBM) having appeared and filed its answer to the complaint denying the material allegations thereof; and plaintiff and defendant, by their attorneys, having consented to the entry of this Final Judgment, without trial or adjudication of any issue of fact or law herein and without any admission by either party with respect to any such issue;

NOW, THEREFORE, before any testimony has been taken herein, and without trial or adjudication of any issue of fact or law herein, and upon consent, as aforesaid, of each party hereto,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

I

The Court has jurisdiction of the subject matter of this action and of the parties. The complaint states a claim upon which relief can be granted against IBM under Sections 1 and 2 of the Act of Congress of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Act, as amended.

II

As used in this Final Judgment:

(a) "Tabulating card" shall mean a unit record card designed for the recording of data in the form of punched holes to be sensed by mechanical or electrical (including electronic) means.

(b) "Tabulating card machinery" shall mean machines and devices, and attachments therefor, used to make tabulating cards.

(c) "Tabulating system" shall mean any group of machines capable of entering, converting, receiving, classifying, computing and recording alphabetic and/or numeric accounting and/or statistical data by means of tabulating cards, and in which tabulating cards are used for storing data and communicating it within the system; provided that "tabulating system" shall not include "electronic data processing system" as hereinafter defined.

(d) "Tabulating machine" shall mean a machine or device and attachments therefor used primarily in a tabulating system.

(e) "Electronic data processing system" shall mean any machine or group of automatically intercommunicating ma-

chine units capable of entering, receiving, storing, classifying, computing and/or recording alphabetic and/or numeric accounting and/or statistical data without intermediate use of tabulating cards, which system includes one or more central data processing facilities and one or more storage facilities, and has either

(1) the ability to receive and retain in the storage facilities at least some of the instructions for the data processing operations required, or

(2) means, in association with storage, inherently capable of receiving and utilizing the alphabetic and/or numeric representation of either the location or the identifying name or number of data in storage to control access to such data, or

(3) storage capacity for 1,000 or more alphabetic and/or decimal numeric characters or the equivalent thereof.

(f) "Electronic data processing machine" shall mean a machine or device and attachments therefor used primarily in or with an electronic data processing system.

(g) "Standard tabulating machine" or "standard electronic data processing machine" shall mean a tabulating machine or an electronic data processing machine manufactured by IBM and made generally available to its customers.

(h) "Special purpose tabulating machine" or "special purpose electronic data processing machine" shall mean a tabulating machine or an electronic data processing machine designed and produced by IBM for use by a limited number of customers but not made generally available to all IBM customers.

(i) "New" machines shall mean tabulating or electronic data processing machines produced (1) by original assem-

bly of new and/or used parts or components or, (2) as to any type of machine generally offered for lease which is not currently being so assembled but is being produced by rebuilding existing machines, by such rebuilding.

(j) "Point value" shall mean the dollar amount of the monthly charge made by IBM in respect of a tabulating or electronic data processing machine leased by IBM to its customers under its machine service agreements.

(k) "Service bureau business" shall mean the preparation with tabulating and/or electronic data processing machines of accounting, statistical and mathematical information and reports for others on a fee basis.

(l) "Service bureau" shall mean an organization engaged principally in the service bureau business.

(m) "Existing patent" (or "existing patents") means any United States letters patent (including, but not limited to, the patents listed in Schedule A to be filed in this Court within 30 days after the entry of this Final Judgment) or patent application, and any division, continuation, reissue or extension of such patent, relating, but only in so far as it relates, to tabulating cards, tabulating card machinery, tabulating machines or systems, or electronic data processing machines or systems, owned or controlled by IBM on January 1, 1956, or under which IBM then had the power to grant licenses or sublicenses to other persons.

(n) "Future patent" (or "future patents") means any United States letters patent or patent application (exclusive of existing patents), and any division, continuation, reissue or extension of such patent, relating, but only in so far as it relates, to tabulating cards, tabulating card machinery, tabulating machines or systems, or electronic data processing machines or systems, owned or controlled

by IBM during the period of five years following January 1, 1956, or under which IBM during such period has the power to grant licenses or sublicenses to other persons.

(o) "Subsidiary" shall mean a corporation more than 50% of whose stock entitled to vote upon election of directors (other than preferred stock entitled to vote upon the failure of the corporation to pay certain dividends) is, directly or indirectly, owned by IBM.

(p) "Person" shall mean an individual, partnership, firm, association, government, governmental institution, or corporation other than individuals who are directors, officers, employees, agents, and representatives of IBM, but shall not include subsidiaries of IBM unless such inclusion is specifically provided for.

III

The provisions of this Final Judgment applicable to IBM shall also be applicable to its subsidiaries, officers, directors, agents, employees, successors, assigns, and all persons acting under, through or for IBM, but shall not impose any obligation to do or omit any action outside the United States unless specifically provided for hereinafter.

IV

(a) It is the purpose of this Section IV of this Final Judgment to assure to users and prospective users of IBM tabulating and electronic data processing machines at any time being offered by IBM for lease and sale an opportunity to purchase and own such machines at prices and upon terms and conditions which shall not be substantially more advantageous to IBM than the lease charges, terms and conditions for such machines.

(b) IBM is hereby ordered and directed, beginning not later than one year after the entry of this Final Judgment, to offer

(1) to sell, at any time during the period of 18 months next thereafter, to the lessee of any IBM tabulating or electronic data processing machine each such machine being used by such lessee; Terminated July 25, 1958

(2) to sell new standard tabulating and electronic data processing machines of each type at any time thereafter currently being manufactured and offered for lease or sale by IBM; and

(3) to sell any new special purpose tabulating or electronic data processing machine to the user for whom it has been designed and produced by IBM.

(c) IBM is hereby ordered and directed to:

(1) establish a sale price for each machine offered for sale pursuant to paragraph (b)(1) of this Section IV which shall not be greater than the sale price for a new machine of the same type and model less 10% for each full year of age, computed from the date of first installation after original assembly or rebuilding, except that for machines more than eight years of age the price may be not more than 25% of such sale price; Terminated July 25, 1958

(2) establish a sale price for each machine offered for sale pursuant to paragraphs (b)(2) and (b)(3) of this Section IV which shall have a commercially reasonable relationship to the lease charges for such machine;

(3) establish such other nondiscriminatory terms as may be appropriate to the sale of tabulating or electronic data processing machines, including, at the option of the purchaser, reasonable credit terms for purchasers

having satisfactory credit ratings and such warranties as are customary for the sale of similar business machines;

(4) afford to its salesmen compensation for selling tabulating and electronic data processing machines which shall be not less favorable to them than their compensation for leasing the same machines;

(5) make a full and fair disclosure, in the solicitation of orders for tabulating and electronic data processing machines, of the prices and terms for the sale and lease of such machines;

(6) furnish in writing, upon written request, to each person inquiring concerning the lease or purchase of IBM tabulating or electronic data processing machines complete information concerning delivery dates and terms and conditions of lease and purchase of such machines; and

(7) fill purchase and lease orders for machines required to be sold by paragraph (b)(2) of this Section IV without discrimination between lease and purchase orders and, to the extent administratively practicable and permitted by law, in the order of their receipt.

Terminated January 25, 1968

(d) In any civil suit or proceeding instituted by the Plaintiff between two and ten years after the entry of this Final Judgment, in which IBM's compliance or noncompliance with the provisions of this Section IV shall be an issue, the burden of proof shall be upon IBM to establish that it has complied with the provisions of this Section IV.

V

(a) IBM is hereby enjoined and restrained from acquiring any used IBM tabulating or electronic data processing machine owned by another person or the Service Bureau Corporation hereinafter provided for in Section VIII of this Final Judgment otherwise than as (1) a trade-in on a purchase of a tabulating or electronic data processing machine from IBM or (2) a reasonable credit against sums then or thereafter payable to IBM by a customer.

(b) IBM is hereby ordered and directed to solicit, in the manner specified in the provisions of paragraph (c) of this Section V, from dealers in second-hand business machines orders for the purchase of any used IBM tabulating or electronic data processing machines acquired by IBM pursuant to paragraph (a) of this Section V. The price charged by IBM for any such machine shall not exceed 85% of the price computed pursuant to paragraph (c)(1) of Section IV of this Final Judgment.

(c) IBM is hereby ordered and directed:

(1) within one year after the entry of this Final Judgment, and each six months thereafter for a period of five years, to cause the provisions of this Section V to be published in at least two trade journals of general circulation among dealers in second-hand business machines;

Terminated January 25, 1961

(2) commencing one year after the entry of this Final Judgment, to furnish at intervals of not more than 30 days to all dealers in second-hand business machines who shall within the preceding 180 days have made written requests therefor, and to at least one national trade association of such dealers, a list of all tabulating and

electronic data processing machines acquired by IBM pursuant to paragraph (a) of this Section V since the date of the making of the last such list, and the prices thereof; and

(3) to keep all machines listed in the information furnished pursuant to subparagraph (2) of paragraph (c) of this Section V available for inspection and purchase by one or more of such dealers for a period of 60 days after such information shall have been furnished.

VI

IBM is hereby ordered and directed:

(a) to offer to render, without separate charge, to purchasers from it of tabulating or electronic data processing machines the same type of services, other than maintenance and repair services, which it renders without separate charge to lessees of the same types of machines;

(b) to offer, commencing one year after the entry of this Final Judgment and so long thereafter as IBM shall continue to render repair and maintenance service, to maintain and repair at reasonable and nondiscriminatory prices and terms IBM tabulating and electronic data processing machines for the owners of such machines; provided that, if any such machine shall be altered, or connected by mechanical or electrical means to another machine, in such a manner as to render its maintenance and repair impractical for IBM personnel having had the standard training and instruction provided by IBM to such maintenance and repair personnel, then IBM shall not be required by this Final Judgment to render maintenance and repair service for such IBM machine; and

(c) to offer to sell at reasonable and nondiscriminatory prices and terms, to owners of IBM tabulating or electronic data processing machines (whether or not the purchaser receives IBM repair and maintenance service) and to persons engaged in the business of maintaining and repairing such machines and during the period when IBM has such parts and subassemblies available for use in its leased machines, repair and replacement parts and subassemblies for any tabulating machines or electronic data processing machines manufactured by IBM.

VII

(a) IBM is hereby enjoined and restrained, for a period of ten years after entry of this Final Judgment, from entering into any lease for a standard tabulating or electronic data processing machine for a period longer than one year, unless such lease is terminable after one year by the lessee upon not more than three months' notice to IBM.

Terminated January 25, 1966

(b) IBM is hereby enjoined and restrained from requiring any lessee or purchaser of an IBM standard tabulating or electronic data processing machine to disclose to IBM the use to be made of the machine.

(c) IBM is hereby enjoined and restrained from requiring any purchaser of an IBM tabulating or electronic data processing machine to have it repaired or maintained by IBM or to purchase parts and subassemblies from IBM.

(d) IBM is hereby enjoined and restrained from:

(1) requiring any lessee or purchaser of an IBM tabulating or electronic data processing machine to purchase tabulating cards from IBM or directly or indirectly discriminating against any such person by

reason of the fact that cards not manufactured by IBM are used,

(2) prohibiting, or in any way subjecting to IBM control or approval, experimentation with such machine, or

(3) prohibiting, or in any way subjecting to IBM control or approval, alterations in or attachments to such machine;

provided, however, that this Section VII (d) shall not be construed to restrain IBM from including in any agreement with any lessee of such a machine provisions reasonably designed to prevent such interference with the normal and satisfactory operation and maintenance of such machine as will substantially increase the cost of maintenance thereof.

VIII

(a) IBM is hereby ordered and directed to transfer, within one year after the date of the entry of this Final Judgment, all its contracts for service bureau business to a corporation (hereinafter called the Service Bureau Corporation), which may be wholly owned by IBM, and IBM shall thereafter be enjoined and restrained from engaging in the service bureau business except on a nondiscriminatory basis for the Service Bureau Corporation and for service bureaus operated by other persons.

(b) The Service Bureau Corporation shall be enjoined and restrained from:

(1) using any corporate name containing the words International Business Machines or IBM;

(2) employing any person also employed by IBM, or any person to solicit for IBM any order for the sale

or lease of any IBM tabulating or electronic data processing machines or systems;

(3) after three years following the date of the entry of this Final Judgment, subleasing space from IBM at the locations of more than 20% of its bureaus; or

(4) for a period of five years after the organization of the Service Bureau Corporation, having a board of directors the majority of which is constituted of persons who previously have not been approved by this Court.

Terminated August 29, 1961

(c) The Service Bureau Corporation shall be ordered and directed to:

(1) maintain, in accordance with good accounting practice, separate and complete corporate records and accounts which shall be audited annually by independent public accountants; and

(2) charge for services rendered by it prices based upon rates which shall fairly reflect all expenses properly chargeable thereto provided, however, that nothing herein contained shall prevent the Service Bureau Corporation from reducing any price to meet an equally low price of a competitor.

(d) IBM is hereby ordered and directed to notify promptly service bureaus using IBM machines of the availability for purchase or lease as required by this Final Judgment of each new type of standard tabulating machine and electronic data processing machine offered by IBM for general use by its customers and of each new type of special purpose tabulating machine and electronic data processing machine made available to the Service Bureau Corporation, and the prices, terms and conditions for the sale or lease thereof.

(e) IBM is hereby enjoined and restrained from furnishing to the Service Bureau Corporation any tabulating or electronic data processing machines except upon the same terms, conditions and delivery schedules that such machines are furnished to any other service bureau.

(f) IBM is hereby ordered and directed to furnish, upon written application and at reasonable and nondiscriminatory charges, to any person engaged, or proposing to engage, in the operation of a service bureau using IBM machines copies of any pamphlets, books of instruction or other similar documents which it furnishes to the Service Bureau Corporation relating to the operation and application of IBM tabulating or electronic data processing machines for service bureau business.

IX

IBM is hereby ordered and directed:

Terminated January 25, 1961

(a) For a period of five years from the date of this Final Judgment, upon written request, to afford to any person (other than agents or employees of a manufacturer of tabulating or electronic data processing machines) who is engaged, or proposes in good faith to engage, in the repair and maintenance or distribution of IBM tabulating machines and/or electronic data processing machines the opportunity to obtain training in the repair and maintenance of such IBM machines, which shall be substantially equivalent in method and nature to such training then being given by IBM to its customer engineering employees. Reasonable and nondiscriminatory charges may be made to reimburse IBM for the cost of furnishing such instruction and any materials furnished to such person taking instruction.

(b) Upon written request to furnish, at reasonable and nondiscriminatory charges made to reimburse IBM for the cost of furnishing them, to any owner of an IBM tabulating or electronic data processing machine and to any person eligible to receive training pursuant to paragraph (a) of this Section IX copies of any technical manuals, books of instruction, pamphlets, diagrams or similar documents, which it furnishes generally to its own repair and maintenance employees relating to tabulating or electronic data processing machines and which pertain to such training.

Terminated January 25, 1961

(c) Upon written request to furnish, on a nondiscriminatory basis, without charge or at a reasonable charge made to reimburse IBM for the cost of furnishing them, to purchasers and lessees of IBM tabulating machines and electronic data processing machines, copies of manuals, books of instruction, pamphlets, diagrams, or similar documents which pertain to the operation or application of such machines owned or leased by such purchasers or lessees.

X

(a) IBM is hereby enjoined and restrained from:

(1) Entering into, maintaining, adhering to, or furthering, directly or indirectly, any contract, agreement, or understanding with or otherwise inducing any manufacturer, distributor, or vendor of raw materials suitable for the manufacture of tabulating cards to discriminate against or refuse to deal with third persons who buy or offer to buy such raw materials.

(2) Discriminating in price between different purchasers of tabulating cards of like grade and quality, provided that this provision shall not prevent differentials which (A) make only due allowance for differ-

ences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered, or (B) are made to meet an equally low price of a competitor. In any proceeding to enforce the provisions of this paragraph, IBM shall have the burden of establishing to the satisfaction of this Court that its price differentials are in fact so justifiable.

(3) Prescribing, fixing, establishing, or maintaining arbitrary, unreasonable, or unnecessary specifications for tabulating cards used in standard and special purpose tabulating machines leased or repaired and maintained by IBM.

(4) Entering into, maintaining, adhering to, or furthering, directly or indirectly, any contract, agreement or understanding with or otherwise inducing any manufacturer, distributor or vendor of tabulating card machinery to discriminate against or refuse to deal with third persons who buy or order to have manufactured and buy such machinery.

(b) IBM is hereby ordered and directed, for a period of five years following the date of entry of this Final Judgment, to offer to sell rotary presses in good condition, of the types used by IBM for the manufacture of tabulating cards, upon reasonable and nondiscriminatory terms and conditions to any person who (1) is engaged, or proposes in good faith to engage, in the manufacture of tabulating cards and (2) has been unable to obtain delivery of such presses, as required for his needs, within a reasonable time from manufacturers of printing presses; provided, that IBM shall not be obliged to deliver more than 30 presses in each year.

Terminated January 25, 1961

(c) IBM is hereby ordered and directed, for a period of five years following the date of entry of this Final Judgment, to offer to sell, from its reserve stocks of paper suitable for the manufacture of tabulating cards, any such paper not required for the reasonably anticipated needs of IBM, to any person who (1) is engaged, or proposes in good faith to engage, in the manufacture of tabulating cards and (2) has been unable to obtain delivery of such paper, as required for his needs, from manufacturers of such paper in the United States. IBM may charge for such paper amounts sufficient to reimburse IBM for its costs.

Terminated January 25, 1961

(d) Seven years from the date of entry of this Final Judgment IBM shall divest itself, upon terms and conditions approved by this Court, of such part of its then existing capacity for the manufacture of tabulating cards as may then be in excess of 50% of the total capacity for the manufacture of tabulating cards in the United States, unless subsequent to four years after the entry of this Final Judgment IBM shall have shown to the satisfaction of this Court that substantial competitive conditions exist in the manufacture, sale and distribution of tabulating cards or that such divestiture is not then necessary or appropriate.

See Appendix B "Order Pursuant to Section X(d) of the Final Judgment"

XI

(a) IBM is hereby ordered and directed to grant to each person making written application therefor an unrestricted, nonexclusive license to make, have made, use and vend tabulating cards, tabulating card machinery, tabulating machines or systems, or electronic data processing machines or systems under, and for the full unexpired term of, any, some or all IBM existing and future patents.

(b) IBM is hereby enjoined and restrained from making any sale or other disposition of any existing or future patent which deprives it of the power or authority to grant such licenses, unless the purchaser, transferee or assignee shall file with this Court, prior to consummation of said transaction, an undertaking to be bound by the provisions of this Section XI with respect to such patent.

(c) IBM and its subsidiaries are ordered and directed, in so far as they have power and right to do so, to grant upon written request and without compensation to a person licensed under any IBM existing or future patent or patents pursuant to Section XI of this Final Judgment, with respect to any products manufactured in the United States pursuant to such license, a nonexclusive grant of immunity from suit under any corresponding foreign patent or application owned or controlled by IBM or a subsidiary of IBM.

(d) IBM is hereby enjoined and restrained from including any restriction whatsoever in any license granted by it pursuant to the provisions of this Section XI, except as hereinafter provided:

(1) the license may be nontransferable;

(2) a reasonable royalty may be charged (except for licenses under existing patents to make, have made, use and vend tabulating cards and/or tabulating card machinery, which shall be royalty-free), which royalty shall be non-discriminatory as among royalty-paying licensees procuring the same rights under the same patents, provided that the royalty charged an applicant who grants a patent license to IBM may reflect the fair value of such license;

(3) reasonable provision may be made for periodic royalty reports by the licensee and inspection of the books and records of the licensee by an independent auditor, an independent engineer or any person acceptable to both licensor and licensee, who shall report to the licensor only the amount of the royalty due and payable;

(4) reasonable provision may be made for cancellation of the license upon failure of the licensee to make the reports, pay the royalties or permit the inspection of his books and records as hereinabove provided; and

(5) the license must provide that the licensee may cancel the license in whole or as to any specified patents at any time after one year from the initial date thereof by giving 30 days' notice in writing to the licensor.

(e) Upon receipt of written application for a license under the provisions of this Section XI, IBM shall advise the applicant in writing of the royalty which it deems reasonable for the patent or patents to which the request pertains. If the applicant rejects the royalty proposed by IBM and if the parties are unable to agree upon a reasonable royalty within 120 days from the date such rejection is communicated in writing to IBM, the applicant or IBM may, upon notice to the Attorney General, apply to this Court for the determination of a reasonable royalty. In any such proceeding, the burden of proof shall be on IBM to establish the reasonableness of the royalty requested by it. Pending the completion of negotiations or any such proceedings, the applicant shall have the right to make, have made, use and vend under the patents to which his application pertains without payment of royalty or other compensation. A final Court determination of reasonable royalty shall be applicable to the applicant, and to any other licensee then hav-

ing or thereafter obtaining the same rights under the same patents, at the option of such other licensee, from the date upon which the applicant requested such license. If the applicant fails to accept a license, such applicant shall pay the court costs in such proceedings and any royalties found by the Court to be due to IBM.

(f) Nothing herein shall prevent any applicant from attacking, in the aforesaid proceedings or in any other controversy, the validity or scope of any of the patents, nor shall this Final Judgment be construed as imputing any validity to any of said patents.

(g) The provisions of this Section XI shall not require IBM to grant a license to any applicant unless:

(1) for a license under an existing patent (except an existing patent relating to tabulating cards and/or tabulating card machinery), said applicant agrees not to bring suit under any, some or all of the United States patents and patents issued on applications owned or controlled by said applicant or under which said applicant has the power to grant licenses on the date of the request by the applicant for a license, for infringement by IBM arising out of the manufacture, use or sale of tabulating machines or systems or electronic data processing machines or systems of the types and models being manufactured or used by IBM in its regular line of business on the date of the request by the applicant, without first having offered to IBM a nonexclusive license for a reasonable royalty under and for the full life of said patent or patents claimed by the applicant to be infringed;

(2) for a license under a future patent (except a future patent relating to tabulating cards and/or tabulating card machinery), said applicant agrees upon

request to grant to IBM, for a reasonable royalty and for the full, unexpired term of each licensed patent, a nonexclusive license, or the right to obtain a nonexclusive license, to make, have made, use and vend tabulating machines or systems, or electronic data processing machines or systems under any, some or all of the United States patents and applications owned or controlled by said applicant or under which said applicant has the power to grant licenses on the date of the request by the applicant for a license;

(3) for a license under a future patent relating to tabulating cards or tabulating card machinery, said applicant agrees upon request to grant to IBM, for a reasonable royalty and for the full, unexpired term of each licensed patent, a nonexclusive license, or the right to obtain a nonexclusive license, to make, have made, use and vend tabulating cards or tabulating card machinery under any, some or all of the United States patents and applications owned or controlled by said applicant or under which said applicant has the power to grant licenses on the date of the request by the applicant for a license; and

(4) in any event, the applicant agrees upon request to grant without compensation, for any products manufactured in the United States pursuant to such license to IBM, a nonexclusive grant of immunity to IBM and any subsidiary of IBM from suit under any corresponding foreign patent or application then owned or controlled by said applicant.

For the purpose of this Section XI(g), a patent shall be deemed to be owned or controlled by an applicant if it is owned or controlled by the applicant, a subsidiary of the

applicant, by a person whose subsidiary the applicant is, or by a person on behalf of whom the applicant then is acting as an agent with respect to the manufacture, use or sale of tabulating cards, tabulating card machinery, tabulating machines or systems, or electronic data processing machines or systems or parts for such machines. Determination of a reasonable royalty for any license to IBM under this Section XI(g) shall be made in the same manner as provided in Section XI(e) for determination of the reasonable royalty for a license granted by IBM, provided that in any proceeding for determination of a reasonable royalty under this Section XI(g) the burden of proof shall be on the person from whom IBM has requested a license to establish the reasonableness of the royalty requested by it.

XII

IBM is enjoined and restrained from instituting, or threatening to institute, any action, suit or proceeding under Sections 281 *et seq.* of Title 35, United States Code (1953), against any person for acts of infringement of existing patents alleged to have occurred prior to the entry of this Final Judgment, except by way of counterclaim in any action brought by any person against IBM; provided, however, that such counterclaim shall not include any claim for infringement of any existing patent relating to tabulating cards or tabulating card machinery.

XIII

(a) IBM is ordered and directed to terminate upon the request of the licensee any existing patent-licensing agreement which is inconsistent with the provisions of Section XI of this Final Judgment and to grant new licenses to licensees affected by this provision upon the terms and conditions specified in Section XI of this Final Judgment.

(b) IBM is hereby enjoined and restrained for a period of five years from the date of entry of this Final Judgment from entering into, adhering to, maintaining, furthering, or renewing, directly or indirectly, any contract, agreement, understanding, or arrangement with any person relating to tabulating cards, tabulating card machinery, tabulating machines or systems, or electronic data processing machines or systems which: Terminated January 25, 1961

(1) grants exclusively to IBM a license, sublicensing right, or immunity under any patent, unless (A) IBM shall have failed in a bona fide effort to obtain a nonexclusive license under such patent and (B) such grant shall permit IBM to grant sublicenses under such patent as required pursuant to Section XI; and

(2) provides for disclosure to IBM on an exclusive basis of any invention, formula, process or technical information, other than the results of joint development programs undertaken by IBM and such person or work done by established research or engineering organizations on behalf of IBM.

(c) IBM is hereby enjoined and restrained for a period of ten years from the date of entry of this Final Judgment from retaining any individual inventor or engineer for work on the design and development of tabulating cards, tabulating card machinery, tabulating machines or systems, or electronic data processing machines or systems except: Terminated January 25, 1966

(1) as an employee having regular hours of employment, or a retired IBM employee; or

(2) under contracts for research, development or engineering services which commit the inventor or engineer to provide personal services for periods of not more than one year.

XIV

Terminated January 25, 1961

(a) IBM is hereby ordered and directed for the period of five years after the entry of this Final Judgment to furnish to each licensee under Section XI of this Final Judgment making written application therefor the technical information enumerated in paragraph (b) of this Section XIV, with respect to, and for use in the manufacture in the United States of:

(1) the IBM tabulating machines listed in Appendix A of this Final Judgment;

(2) tabulating cards; or

(3) tabulating card machinery

manufactured by or to the order of IBM and used commercially at any time during the five years immediately preceding the date of the entry of this Final Judgment. IBM may make reasonable and nondiscriminatory charges for furnishing such technical information pursuant to paragraphs (b) and (c) of this Section XIV which shall not exceed the costs to IBM of furnishing it.

Terminated January 25, 1961

(b) The technical information to be furnished pursuant to paragraph (a) of this Section XIV shall consist of copies of the most current documents (including, but not limited to, schematic and detailed working drawings, specifications of material, prescribed production methods, and assembly drawings) employed by IBM prior to the date of the entry of this Final Judgment in the manufacture and assembly of such tabulating machines, tabulating cards, or tabulating card machinery, but shall not include information relating to typewriters or machines and devices for controlling, measuring or recording time, tolls or production.

(c) In the event that any applicant represents to IBM in writing that the technical information furnished by IBM is inadequate to enable him satisfactorily to manufacture or assemble the standard tabulating machines, tabulating cards, or tabulating card machinery covered thereby, IBM shall supply such applicant such further explanation of the information supplied as may be reasonably necessary for that purpose.

Terminated January 25, 1961

XV

(a) IBM is hereby enjoined and restrained from entering into, adhering to, maintaining, or furthering, directly or indirectly and whether inside or outside the United States, any contract, agreement, understanding, plan or program with any person engaged in the manufacture, sale, distribution or repair and maintenance of tabulating cards, tabulating card machinery, tabulating machines or systems, or electronic data processing machines or systems to:

(1) divide sales or manufacturing territories;

(2) allocate markets among manufacturers; or

(3) limit, restrain, or prevent the import into, or export from, the United States, its territories and possessions, of tabulating cards, tabulating card machinery, tabulating machines or systems, or electronic data processing machines or systems.

(b) IBM is hereby enjoined and restrained from conditioning the sale or lease of any standard tabulating or electronic data processing machine (which shall include any machine unit on a separate base even if in normal use it is mechanically or electrically connected with another such machine unit) upon the purchase or lease of any other standard tabulating or electronic data processing machine.

(a) IBM is ordered and directed (1) within 90 days after the entry of this Final Judgment (A) to furnish a true and complete copy of this Final Judgment to each of its officers, directors and employees at the policy level, its engineering personnel, its employees engaged in selling tabulating machines, tabulating cards and electronic data processing machines, its patent licensees and all its present lessees, and (B) to notify all its lessees that their leases shall be deemed to have been modified to the extent, if any, necessary to conform to the provisions of this Final Judgment, and within 15 days thereafter to file with the Clerk of this Court its affidavit affirming that IBM has complied with the foregoing terms of this paragraph (a) of Section XVI; and (2) at any time within ten years after the entry of this Final Judgment to furnish to anyone, upon written request, a copy of Schedule A.

Terminated January 25, 1966

(b) IBM is ordered and directed, on or before March 31 of each of the first ten years following the year in which IBM first offers machines for sale pursuant to Section IV of this Final Judgment, to furnish to the Attorney General, for the preceding calendar year:

Terminates March 31, 1967

(1) a statement showing the sales and lease prices effective during such year, for each type of IBM standard tabulating and electronic data processing machine;

(2) a statement showing the number and the aggregate point values of each class of standard tabulating and electronic data processing machines sold by IBM in the United States pursuant to Sections IV(b)(2) and V of this Final Judgment, less the total point values of such machines reacquired by IBM, during such year;

(3) a statement showing the number and the aggregate point values of each class of standard tabulating and electronic data processing machines owned by IBM and placed in use by customers in the United States, less the total point values of such machines owned by and returned to IBM, during such year;

(4) a statement showing the number and the aggregate point values of each class of tabulating and electronic data processing machines sold by IBM during such year pursuant to Section IV(b)(1) of this Final Judgment; and

(5) a statement showing the number of tabulating machines acquired by IBM pursuant to paragraph (a) of Section V of this Final Judgment and in respect of each such machine resold to a dealer in second-hand business machines pursuant to paragraph (b) of Section V, its type, age, resale price and the price of a new machine of the same type.

XVII

For the purpose of securing compliance with this Final Judgment, duly authorized representatives of the Department of Justice shall upon request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division and on reasonable notice to IBM made to its principal office be permitted, subject to any legally recognized claim of privilege approved by this Court, (a) access during the office hours of IBM to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession, custody, or control of IBM relating to any matters contained in this Final Judgment, and (b) subject to the reasonable convenience of IBM but

without restraint or interference from it, to interview officers, directors, agents, or employees of IBM, who may have counsel present, regarding any such matters. For the purpose of securing compliance with this Final Judgment, IBM upon the written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, and upon reasonable notice to its principal office, shall submit such written reports with respect to any of the matters contained in this Final Judgment as from time to time may be necessary for the purpose of enforcement of this Final Judgment.

XVIII

Information obtained by the means provided in Sections XVI and XVII of this Final Judgment shall not be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of such Department, except in the course of legal proceedings to which the United States is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

XIX

Jurisdiction is retained for the purpose of enabling either of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification or termination of any of the provisions contained herein and for the enforcement of compliance therewith and the punishment of the violation of any of the provisions contained herein.

XX

The provisions of this Final Judgment shall not be deemed to have any effect on the judgments entered in this Court on December 26, 1935, and January 29, 1936, in *United States* v. *International Business Machines Corporation, et al.*

Dated: January 25th, 1956.

DAVID N. EDELSTEIN
United States District Judge

We consent to the making and entry of the foregoing Final Judgment:

For the Plaintiff:

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Assistant Attorney General

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by JOHN N. IRWIN, II
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COOPER, DUNHAM, KEITH & DEARBORN

by DRURY W. COOPER, JR.,
a member of the above firm.

APPENDIX B

United States District Court

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, *Plaintiff.* v. INTERNATIONAL BUSINESS MACHINES CORPORATION, *Defendant.*	Civil Action No. 72-344

ORDER

This action having been commenced by a complaint filed on January 21, 1952, and terminated by a Final Judgment entered on consent of the parties herein on January 25, 1956 (hereinafter called the Final Judgment); and plaintiff and defendant, by their attorneys, having consented, before any testimony has been taken, to entry of this Order pursuant to Section X(d) of the Final Judgment without trial or adjudication of any issue of fact or law and without this Order constituting any admission or adjudication with respect to any such issue, it is hereby ordered as follows:

I

Solely for the purposes of this Order:

(a) "Tabulating cards" means unit record cards designed for the recording of data in the form of punched holes to be sensed by mechanical or electrical (including electronic) means.

(b) "Special feature tabulating cards" means all tabulating cards, whether single or incorporated in sets, sheets, or continuous rolls, other than single, cut tabulating cards 3¼" wide and 7⅜" long, unprinted or printed on one side in any one color ink, with no special features except one or two corner cuts on the same end, striping and/or edge coating. Special feature tabulating cards include those having such features as punching, numbering, scoring, back printing, overprinting, and those with more than normal ink coverage or printing quality.

(c) "Capacity" means the number of tabulating cards per hour capable of being produced by tabulating card presses solely from tabulating card stock, and shall be calculated on the basis of the press manufacturer's rated capacity of such presses.

II

(a) IBM is hereby ordered and directed:

(1) On or before September 1, 1963, to divest itself of such part of its capacity for the manufacture of tabulating cards, determined as of December 31, 1962, as may have been in excess of 50% of the total capacity on December 31, 1962, for the manufacture of tabulating cards in the United States. Any tabulating card presses of which IBM shall be required to divest itself shall be presses capable of manufacturing special feature tabulating cards;

Completed August 31, 1963

(2) On or before September 1, 1963, to file with this Court and furnish to the Attorney General a report setting forth the manner in which it has complied with the provisions of subsection (a)(1); and

Completed August 31, 1963

(3) On or before September 1, 1968, to divest itself of such part of its capacity for the manufacture of

special feature tabulating cards, determined as of December 31, 1967, as may have been in excess of 50% of the total capacity on December 31, 1967, for the manufacture of such tabulating cards in the United States.

Terminated by determination as of December 31, 1967, that capacity was under 50%

(b) The extent of the divestiture by IBM pursuant to subsection (a)(1) and (a)(3) hereof shall be determined, if possible, by stipulation or agreement between the parties to be approved by this Court. In case of inability of the parties to agree, this Court, upon motion by either party, shall hear and determine the matters in dispute.

(c) Any tabulating card presses of which IBM shall be required to divest itself pursuant to subsection (a)(1) and (a)(3) hereof shall, beginning not later than June 1, 1963, or 1968, as the case may be, be taken out of production of tabulating cards by IBM and, for a period of ninety days, shall be offered by IBM for sale to all licensees under IBM's patents relating to tabulating cards or tabulating card machinery and, upon request, shall be sold by IBM to any such licensee or any other person, at prices which shall not be greater than the sale price for a new press of the same type and model less 10% for each full year of age, except that for presses more than eight years of age the price may be not more than 25% of such sale price.

III

The making and entry of this Order shall not in any manner create any bar or estoppel against either party in any action, suit or proceeding based upon or arising out of any alleged violation of the Final Judgment or this Order or based upon or arising out of any alleged violations of the antitrust laws.

IV

The obligations imposed upon IBM by this Order shall be in lieu of those imposed upon it by subsection (d) of Section X of the Final Judgment but this Order shall not otherwise have any effect upon any of the other provisions of the Final Judgment.

Dated, January 14, 1963.

DAVID N. EDELSTEIN
United States District Judge

We consent to the making and entry of the foregoing Order:

For the Plaintiff:

LEE LOEVINGER
Lee Loevinger
Assistant Attorney General

W. D. KILGORE, JR.
William D. Kilgore, Jr.

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Harry N Burgess

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and

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